IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.25364 of 2024
and
W.M.P.Nos.27721 & 27724 of 2024

M/s.Super Sales Corporation
represented by its Proprietor,
Mr.Bhupendra Singh
Having Office at
No.22/9, GT PLAZA,
Stortten Muthia Mudali Street,
Chennai - 600 079. ...Petitioner

Vs.

The Commercial Tax Officer (ST),
Sowcarpet Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
3rd Floor (Room No.302), Chennai - 3. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order reference No.ZD330324059248F dated 12.03.2024 for the Financial Year April 2018-March 2019, which came to be passed by the office of respondent as per the provisions u/s.74 of the GST Act and quash the same and direct the petitioner to pay a sum of the entire ITC of CGST of Rs.1,56,846/- & SGST of Rs.1,56,846/- (along-with interest and penalty). The same has to be treated as "Not eligible for claiming ITC" and "the same has to be reversed by the beneficiary" and as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.Kumarpal R. Chopra
For Respondent : Ms.Amritapoonkodi Dinakaran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 12.03.2024 passed by the respondent relating to the financial year 2018-2019, on the ground that it is made in violation of principles of natural justice.

2. Ms.Amritapoonkodi Dinakaran, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main Writ Petition is taken for disposal at the admission stage.

3. The petitioner is engaged in the business of supply of electrical wires. The petitioner is registered under the GST Act and the petitioner has filed the returns and paid appropriate taxes for the financial year 2018-2019. While so, there was an inspection of the business place of the petitioner. During such inspection, it was found that the petitioner is not involved in any supplies

and had indulged in bill trading activity. It was further found that the petitioner had availed Input Tax Credit on the strength of invoices allegedly not genuine but fictitious.

3.1. Subsequently, notices in Form DRC01A & DRC01 were issued to the petitioner on 01.11.2023 & 09.11.2023 through GST portal and the petitioner had submitted its reply on 03.11.2023, wherein it was stated that they were dealer under the VAT regime. Infact, the petitioner has purchased the material from Tvl.SRD Marketing and the consideration for the supplies was paid and appropriate taxes remitted. However, the impugned order proceeds on the basis that no reply has been filed, in other words the petitioner has not responded. The impugned order proceeds to confirm the proposals. It is also indicated that the petitioner is ready and willing to produce any additional documents that may be required.

4. The learned counsel for the petitioner submitted that the impugned order made in gross violation of principles of natural justice and also suffers from non-application of mind. By relying on the reply dated 03.11.2023, he would submit that the consideration for the supplies offered by Tvl.SRD

Marketing were through proper banking channel and are genuine. However, the impugned order has proceeded on the basis that these are fictitious, without any material and contrary to the material on record.

5. Ms.Amritapoonkodi Dinakaran, learned Government Advocate appearing for the respondent would submit that even if one considers the reply dated 03.11.2023, it is bereft of any particulars/details.

6. At this juncture, the learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned order dated 12.03.2024 is set aside

and the petitioner shall deposit 25% of the disputed tax within a period of two (2) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

8. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Commercial Tax Officer (ST),
Sowcarpet Assessment Circle,

Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road, 3rd Floor (Room No.302), Chennai - 3.

MOHAMMED SHAFFIQ, J.

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